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BEFORE THE FEDERAL ELECTION COMMISSION

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MUR # 7099

PAUL S. RYAN  
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v.

MUR No. \_\_\_\_\_

PRIORITIES USA ACTION  
601 13th Street, NW, Suite 610N  
Washington, DC 20005

SUFFOLK CONSTRUCTION COMPANY, INC.  
65 Allerton St.  
Boston, MA 02119

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that Suffolk Construction Company, Inc. has made, and Priorities USA Action (I.D. C00495861) may have solicited and has received, contributions from a person who has received a federal government contract, in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.*
2. Specifically, based on published reports, complainants have reason to believe that Suffolk Construction Company, Inc. violated FECA's prohibition on any federal contractor making a contribution to a political committee while negotiating or performing a federal

contract, 52 U.S.C. § 30119(a)(1), and that Priorities USA Action may have violated the ban on knowingly soliciting a federal contractor to make such a contribution, 52 U.S.C. § 30119(a)(2), and additionally violated its duty to “determine the legality” of contributions at the time they were made and to refund within 30 days any contributions the committee “later discovers” came from a prohibited source such as a federal contractor, 11 C.F.R. § 103.3(b)(1-2).

3. “If the Commission, upon receiving a complaint ... has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] ... [t]he Commission shall make an investigation of such alleged violation ....” 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

#### FACTS

4. Priorities USA Action is an independent expenditure-only political committee (*i.e.*, a “super PAC”) that filed its statement of organization with the Commission on April 28<sup>th</sup>, 2011.<sup>1</sup> The “about” page of the Priorities USA Action website states the group is “all in for Hillary Clinton” and its purpose in the 2016 election cycle is to “educate voters about why Hillary Clinton is the clear choice for President.”<sup>2</sup> Clinton’s husband has been featured at fundraisers for the group.<sup>3</sup>

<sup>1</sup> See Details for Committee ID: C00495861 (Priorities USA Action), FEC.gov website, available at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do?candidateCommitteeId=C00495861&tabIndex=3>.

<sup>2</sup> Priorities USA Action website, “About” page, available at <http://prioritiesusaaction.org/about/> (accessed June 30, 2016).

<sup>3</sup> Maggie Haberman, “Bill Clinton to Appear for ‘Super PAC’ Backing Hillary Clinton,” *New York Times*, Nov. 17, 2015, available at <http://www.nytimes.com/politics/first-draft/2015/11/17/bill-clinton-to-appear-for-super-pac-backing-hillary-clinton/>.

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5. Suffolk Construction Company, Inc. is a corporation incorporated in Massachusetts and registered with the Massachusetts Secretary of State at the address 65 Allerton St, Boston MA, 02119.<sup>4</sup>
  6. According to USAspending.gov, a U.S. government website that lists federal contracts and grants, Suffolk Construction Company, Inc. has been awarded a total of \$976,560 in U.S. government contracts in Fiscal Year 2016 (which runs October 1, 2015 to September 30, 2016), in the form of five contracts with the Department of Defense.<sup>5</sup> The company also received \$302,000 in U.S. government contracts in Fiscal Year 2015 (which ran October 1, 2014 to September 30, 2015), in the form of two contracts with the Department of Defense.<sup>6</sup> The address for Suffolk Construction Company, Inc. listed on the USAspending.gov website is 65 Allerton St, Boston MA, 02119.<sup>7</sup>
  7. Suffolk Construction Company, Inc. has received U.S. government contracts in every year since USAspending.org was launched in 2008.<sup>8</sup> The company's website lists

<sup>4</sup> See Business Entity Search, "Suffolk Construction Company, Inc.," Massachusetts Secretary of State Corporations Division website, available at <http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042776356>.

<sup>5</sup> See Recipient Profile: Suffolk Construction Company, Inc. (FY 2016), USAspending.gov, available at <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=107904625&FiscalYear=2016>; see also Prime Awards by Spending Type – FY2016, available at <https://www.usaspending.gov/Pages/TextView.aspx?data=RecipientPrimeFundsByType&dunsnumber=107904625&fiscalyear=2016> (noting that the \$976,560 awarded to Suffolk Construction Company, Inc. was for "contracts").

<sup>6</sup> See Recipient Profile: Suffolk Construction Company, Inc. (FY 2015), USAspending.gov, available at <https://www.usaspending.gov/transparency/Pages/RecipientProfile.aspx?DUNSNumber=107904625&FiscalYear=2015>.

<sup>7</sup> *Id.*

<sup>8</sup> See "Total Funds Awarded as Prime and as Sub," USAspending.gov, available at <https://www.usaspending.gov/Pages/TextView.aspx?data=RecipientPrimeFundsByType&dunsnumber=107904625&fiscalyear=2016> (listing federal contracts back to 2008).

“government construction” as one of its areas of expertise and provides a list of its government projects.<sup>9</sup>

8. On July 20, 2015, Suffolk Construction Company, Inc. made a \$100,000 contribution to Priorities USA Action, with reports filed with the Commission showing that the contribution came from the same name and address listed on the USAspending.gov website.<sup>10</sup> On December 17, 2015, Suffolk Construction Company, Inc. made a \$100,000 contribution to Priorities USA Action, again using the same name and address listed on the USAspending.gov website.<sup>11</sup>
9. Suffolk Construction Company, Inc.’s \$200,000 in contributions put the company among Priorities USA Action’s top donors for the 2016 election cycle.<sup>12</sup>
10. On April 7, 2016, the *Center for Public Integrity* reported that:

Priorities USA Action ... received \$200,000 last year from the corporate treasury of Suffolk Construction Company Inc., a Boston-based firm with a portfolio filled with dozens of completed private sector and public sector projects, including facilities operated by the federal government.

Government contracting records indicate that the federal government has awarded Suffolk Construction more than \$168.8 million worth of contracts since fiscal year 2008.

<sup>9</sup> See Suffolk Construction Company, Inc. website, “Government Construction Expertise,” available at <http://www.suffolk.com/projects/government.html>.

<sup>10</sup> See Priorities USA Action January 2016 Year-End Report of Receipts and Disbursements, p. 12 of 355, available at <http://docquery.fec.gov/cgi-bin/fecimg/?201601319005016778>.

<sup>11</sup> See Priorities USA Action January 2016 Year-End Report of Receipts and Disbursements, p. 11 of 355, available at <http://docquery.fec.gov/cgi-bin/fecimg/?201601319005016777>.

<sup>12</sup> See Center for Responsive Politics, “Priorities USA Action Top Donors 2016 Cycle,” OpenSecrets.org (ranking Suffolk Construction as the 36<sup>th</sup>-biggest donor to Priorities USA Action), available at <https://www.opensecrets.org/outsidespending/contrib.php?cmte=C00495861&cycle=2016> (accessed June 30, 2016).

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Officials at Suffolk Construction repeatedly declined to explain why the company contributed money to Priorities USA Action.<sup>13</sup>

The *Center for Public Integrity* article also noted that “Priorities USA Action’s [spokesperson Justin] Barasky ... declined to comment” on the Suffolk Construction Company, Inc. contributions.<sup>14</sup>

11. On June 29, 2016, *The Hill* reported that:

A super-PAC backing Hillary Clinton has accepted \$200,000 in donations from a company holding multiple contracts with the federal government—despite a ban on such contributions.

According to a review of contributions by *The Hill*, Boston-based Suffolk Construction made two contributions of \$100,000 to Priorities USA, which is backing the presumptive Democratic presidential nominee.

At the time it made the contributions, Suffolk held multiple contracts worth \$976,560 with the Department of Defense for maintenance and construction projects at a Naval base in Newport, R.I., and the U.S. Military Academy in West Point, N.Y., according to the government website USASpending.gov.<sup>15</sup>

The article additionally noted that “Suffolk Construction, which since 2008 has received \$169.7 million in federal contracts, according to USASpending.gov, declined multiple requests for comment.<sup>16</sup>”

12. On July 1, 2016, *The Hill* reported that Suffolk Construction Company Inc. said in a statement that Priorities USA Action had returned the company’s contributions; Priorities USA Action confirmed to *The Hill* that it had returned Suffolk Construction Company,

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<sup>13</sup> Dave Levinthal, “How ‘Citizens United’ is helping Hillary Clinton win the White House,” *Center for Public Integrity*, April 7, 2016, available at <https://www.publicintegrity.org/2016/04/07/19521/how-citizens-united-helping-hillary-clinton-win-white-house>.

<sup>14</sup> *Id.*

<sup>15</sup> Harper Neidig and Jonathan Swan, “Exclusive: Pro-Hillary Group Takes \$200K In Banned Donations,” *The Hill*, June 19, 2016, available at <http://thehill.com/homenews/campaign/285269-exclusive-pro-hillary-group-takes-200k-in-banned-donations>.

<sup>16</sup> *Id.*

Inc.'s contributions.<sup>17</sup> The article in *The Hill* did not specify the date on which Suffolk Construction Company, Inc.'s contributions were returned.<sup>18</sup>

13. Priorities USA Action's disclosure reports filed with the Commission covering the committee's financial activity during the months of April 2016 (i.e., "May Monthly")<sup>19</sup> and May 2016 (i.e., "June Monthly")<sup>20</sup> show no contributions refunded by Priorities USA Action to Suffolk Construction Company, Inc.

#### SUMMARY OF THE LAW

14. "Contribution" is defined as "any gift ... of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i).
15. Federal law prohibits a federal contractor from making any "contribution to any political party, committee, or candidate for public office" at any time between the commencement of negotiations for a federal contract and the completion of performance under that contract. 52 U.S.C. § 30119(a)(1).
16. Federal law additionally prohibits any person from knowingly soliciting such a contribution from a federal contractor. 52 U.S.C. § 30119(a)(2).
17. This statutory federal contractor ban is implemented by the regulation at 11 C.F.R. § 115.2, which provides that it is unlawful for a "Federal contractor ... to make, either

<sup>17</sup> Harper Neidig, "Pro-Clinton PAC returns banned donations," *The Hill*, July 1, 2016, available at <http://thehill.com/blogs/ballot-box/presidential-races/286259-pro-clinton-pac-returns-banned-donations>.

<sup>18</sup> *Id.*

<sup>19</sup> See Priorities USA Action May 20, 2016 Monthly Report of Receipts and Disbursements (covering period 04/01/2016 to 04/31/2016), available at <http://docquery.fec.gov/pdf/474/201605209015949474/201605209015949474.pdf>.

<sup>20</sup> See Priorities USA Action June 20, 2016 Monthly Report of Receipts and Disbursements (covering period 05/01/2016 to 05/31/2016), available at <http://docquery.fec.gov/pdf/472/201606209018565472/201606209018565472.pdf>.

directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use.” *Id.* The prohibition applies during the period between when a request for proposals is sent out (or when contractual negotiations commence) and the completion of performance of the contract or the termination of negotiations. 11 C.F.R. § 115.1(b)(1-2).

18. Commission regulations define a “federal contractor” as any person who “[e]nters into any contract with the United States or any department or agency thereof” for “[t]he rendition of personal services” or for “furnishing any material, supplies, or equipment,” 11 C.F.R. § 115.1(a)(1)(i-ii), and where payment for performance of the contract is “made in whole or in part from funds appropriated by the Congress,” *Id.* § 115.1(a)(2).
19. The prohibition applies equally to a federal contractor making contributions to political parties, political committees, and candidates. 52 U.S.C. § 30119(a)(1), 11 C.F.R. § 115.2. In 2011, for example, the Commission rejected a claim that the prohibition does not apply to federal contractors who make contributions to independent expenditure-only political committees following the U.S. Supreme Court’s decision in *Citizens United v. FEC*<sup>21</sup> and the D.C. Circuit Court of Appeals decision in *SpeechNow.org v. FEC*.<sup>22</sup> MUR 6403 (Alaskans Standing Together) Notification with Factual and Legal Analysis to Ahtna, Inc. and NANA Regional Corporation, Inc. (Nov. 10, 2011), at 5, 9.<sup>23</sup> The Commission emphasized that a contractor making a contribution to a political committee to fund

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<sup>21</sup> 130 S.Ct. 876 (2010).

<sup>22</sup> 599 F.3d 686 (D.C. Cir. 2010).

<sup>23</sup> Available at <http://eqs.fec.gov/eqsdocsMUR/11044304942.pdf>.

independent expenditures is not *itself* making an expenditure; therefore, a contribution to such a committee falls “squarely within the statute’s prohibitions.” *Id.* at 9.

20. Commission regulations require a political committee’s treasurer to “examin[e] all contributions received for evidence of illegality.” 11 C.F.R. § 103.3(b). At the time of receipt, “[c]ontributions that present genuine questions as to whether they were made by ... Federal contractors” may either be returned to the contributor or, if deposited, “the treasurer shall make his or her best efforts to determine the legality of the contribution.” *Id.* § 103.3(b)(1).
21. If, after a contribution is received and deposited, a political committee treasurer “later discovers” that the contribution was made by a Federal contractor “based on new evidence not available to the political committee at the time of receipt and deposit,” then “the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered.” 11 C.F.R. § 103.3(b)(2) (emphasis added).
22. The Commission has previously advised committees that received a contribution from a person they did not know at the time to be a federal contractor to return the contribution upon determining that the contribution came from a prohibited source. *See* Advisory Opinion 1980-37 (Stenholm). As the Commission has noted: “While there are situations where contributions are accepted without any knowledge, or reason to know, of the unlawful nature of the contribution at the time of receipt, it does not follow that when the recipient acquires later information revealing the unlawful nature of the contribution, he or she is excused from the duty to refund such a contribution.” Advisory Opinion 1984-52 (Russo) at 2-3; *see also* Advisory Opinion 1996-05 (Kim).

**CAUSES OF ACTION**

**I. SUFFOLK CONSTRUCTION COMPANY, INC. HAS VIOLATED THE BAN ON FEDERAL CONTRACTORS MAKING CONTRIBUTIONS**

23. Federal law and Commission regulations prohibit a federal contractor from making any contribution to any political committee during the period in which a federal contract is being negotiated or performed. 52 U.S.C. § 30119(a)(1), 11 C.F.R. Part 115.
24. Based on the U.S. government website USAspending.org, Suffolk Construction Company, Inc. is a federal contractor within the meaning of FECA and its implementing regulations. See 11 C.F.R. §§ 115.1(a-b).
25. Based on the U.S. government website USAspending.org, Suffolk Construction Company, Inc. was performing and/or negotiating multiple federal contracts in FY 2015 and FY 2016, at the same time that it made contributions to Priorities USA Action, based on that political committee's reports filed with the Commission.
26. Therefore, based on public information, there is reason to believe that Suffolk Construction Company, Inc., as a federal contractor, violated the federal contractor contribution ban by making a "contribution to any political ... committee," namely Priorities USA Action, during the period its federal contracts were being negotiated and/or performed. 52 U.S.C. § 30119(a)(1).<sup>24</sup>

**II. PRIORITIES USA ACTION MAY HAVE VIOLATED THE BAN ON SOLICITING CONTRIBUTIONS FROM FEDERAL CONTRACTORS**

27. Federal law and Commission regulations prohibit any person from knowingly soliciting a federal contractor to make any "contribution to any political ... committee" while the

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<sup>24</sup> Suffolk Construction Company, Inc.'s name and address is identical on both the USAspending.gov website and the Priorities USA Action reports, indicating that the contribution came from Suffolk Construction Company, Inc. itself rather than a subsidiary.

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contractor is negotiating a federal contract or during the performance of their contract. 52 U.S.C. § 30119(a)(2), 11 C.F.R. §§ 115.2(c).

28. Suffolk Construction Company, Inc. is a federal contractor that was performing and/or negotiating multiple federal contracts at the time that it made contributions to Priorities USA Action. Suffolk Construction Company, Inc.'s two contributions of \$100,000 each are among the largest received by Priorities USA Action in 2015, strongly indicating that the contributions were solicited by the political committee or its agents, rather than being made without any solicitation by the committee. Additionally, Suffolk Construction Company, Inc. is well-known as a federal contractor, having received at least \$169.7 million in federal contracts since 2008 and advertising its "expertise" in government contracting on its website.

29. Therefore, there is reason to believe that Priorities USA Action may have violated the ban on knowingly soliciting a federal contractor to make a "contribution to any political . . . committee" while the contractor is negotiating a federal contract or during the performance of their contract. 52 U.S.C. § 30119(a)(2), 11 C.F.R. §§ 115.2(c).

**III. PRIORITIES USA ACTION VIOLATED ITS DUTY TO REFUND ILLEGAL CONTRACTOR CONTRIBUTIONS WITHIN 30 DAYS OF DISCOVERING THEIR ILLEGALITY**

30. Federal law and Commission regulations impose a duty on a political committee to identify and return in a timely fashion illegal contributions made by federal contractors.

31. Commission regulations require that upon receipt of a contribution, a political committee shall "examin[e] all contributions received for evidence of illegality." 11 C.F.R. § 103.3(b)(1) (implementing statutory requirements at 52 U.S.C. § 30102(h)(1)). The regulations further provide that "[c]ontributions that present genuine questions as to whether they were made by ... Federal contractors" may either be returned to the

contributor or, if deposited, the committee treasurer “shall make his or her best efforts to determine the legality of the contribution.” *Id.* If a political committee “later discovers” that a contribution was made by a federal contractor “based on new evidence not available to the political committee at the time of receipt and deposit,” then “the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered.” 11 C.F.R. § 103.3(b)(2) (emphasis added).

32. Suffolk Construction Company, Inc.’s status as a federal contractor was well-documented at the time it made its significant contributions to Priorities USA Action in July and December 2015. For example, it had received \$169.7 million in federal contracts since 2008 and advertised its “expertise” in government contracting on its website. Any reasonable and prudent examination of publicly available information by Priorities USA Action at the time it accepted the contributions in 2015 would have revealed that Suffolk Construction Company, Inc. was a federal contractor.
33. Priorities USA Action was provided additional notice of Suffolk Construction Company, Inc.’s status as a federal contractor at least as early as April 2016, when the Center for Public Integrity asked Priorities USA Action for comment about the company’s contributions, and then published a story describing Suffolk Construction Company, Inc.’s status as a federal contractor.<sup>25</sup> Despite this notification, Priorities USA Action’s disclosure reports filed with the Commission covering the months of April 2016 (i.e., “May Monthly”) and May 2016 (i.e., “June Monthly”) establish that Priorities USA

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<sup>25</sup> Levinthal, “How ‘Citizens United’ is helping Hillary Clinton win the White House,” *Center for Public Integrity*, April 7, 2016, *supra* n. 13.

Action did not refund contributions to Suffolk Construction Company, Inc. during those months.<sup>26</sup>

34. Priorities USA Action was again given notice of Suffolk Construction Company, Inc.'s status as a federal contractor in June 2016 when *The Hill* published a similar article raising the same questions.<sup>27</sup> After this late-June article by *The Hill*, Suffolk Construction Company, Inc. issued a statement indicating that its contributions had been returned by Priorities USA Action.<sup>28</sup>
35. Therefore, based on published reports, there is reason to believe that Priorities USA Action violated its duty to "determine the legality" of Suffolk Construction Company, Inc.'s contributions at the time they were made, and when faced with additional later evidence that the contributions came from a prohibited source at least as early as April 2016, violated its duty to "refund the contribution to the contributor within thirty days of the date on which the illegality [was] discovered." 11 C.F.R. § 103.3(b)(1-2). The fact that Priorities USA Action may have refunded the contributions in late June 2016 does not cure its apparent failure to investigate the legality of the contributions at the time the committee accepted them in July and December of 2015, nor its failure to refund the contributions within 30 days of publicly-reported information in April 2016 that the contributions may have been made by a federal contractor.

#### **PRAYER FOR RELIEF**

36. Wherefore, the Commission should find reason to believe that Suffolk Construction Company, Inc. and Priorities USA Action have violated 52 U.S.C. § 30101, *et seq.* and

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<sup>26</sup> *Supra* n. 19-20.

<sup>27</sup> Neidig and Swan, "Exclusive: Pro-Hillary Group Takes \$200K In Banned Donations," *The Hill*, June 19, 2016, *supra* n. 15.

<sup>28</sup> Neidig, "Pro-Clinton PAC returns banned donations," *The Hill*, July 1, 2016, *supra* n. 17.



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**Counsel to Democracy 21**

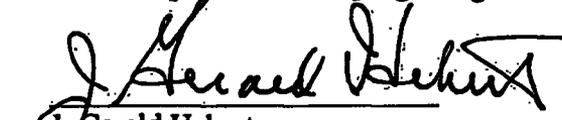
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**VERIFICATION**

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true.

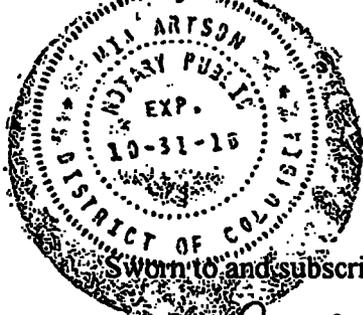
Sworn pursuant to 18 U.S.C. § 1001.

**For Complainant Campaign Legal Center**

  
\_\_\_\_\_  
J. Gerald Hebert

Sworn to and subscribed before me this 0 day of July 2016.

Mia Artson  
\_\_\_\_\_  
Notary Public

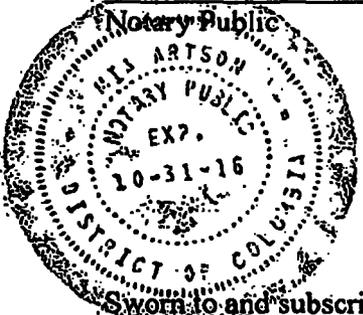


**For Complainant Democracy 21**

  
\_\_\_\_\_  
Fred Wertheimer

Sworn to and subscribed before me this 0 day of July 2016.

Mia Artson  
\_\_\_\_\_  
Notary Public

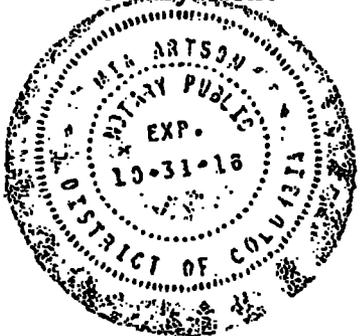


**For Complainant Paul S. Ryan**

  
\_\_\_\_\_  
Paul S. Ryan

Sworn to and subscribed before me this 0 day of July 2016.

Mia Artson  
\_\_\_\_\_  
Notary Public



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